



Montana Legislative Services Division
Office of the Executive Director

STATE ADMINISTRATION
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Date _____ (406) 444-3064
FAX (406) 444-3036 3-18-2011
Bill No. _____ SB 404

February 9, 2011

To: Representative Jon Sesso, Senator Carol Williams

From: Susan Byorth Fox *Susan*

Re: Information request on bills with legal or constitutional concerns noted

This is in response to your information request for a list of all the bills that have a notation regarding the legality or constitutionality of the bill draft requests. Attached is a spreadsheet with a list of bills for which the drafter noted any legal or constitutional concerns. I gleaned this information by referring to the front page of each bill draft junque file (which I explained to you in a previous letter). (Bills requested by interim committees indicate agency bills.)

This list is not exhaustive or complete. There are bills still being drafted. Some bills may be amended through the process to resolve the legal or constitutional concerns. Other bills may have had concerns raised elsewhere and may not have been readily apparent. Because drafting a bill is different for each drafter, requester, and bill, there is no standardized approach by the drafters for identifying every legal concern.

The drafter or legal director *cannot determine* the legality or constitutionality of a bill, only the courts can decide that, so it should not be assumed that all of these bills that are listed in the attachment are unconstitutional, nor that the bills would necessarily be invalidated if challenged.

Given the issues that have arisen this session regarding bills with legal or constitutional concerns, it is important to explain the Legislative Service's Division legal review process. A bill drafter notifies the legislator who requested the bill of any *known* legal or constitutional concerns with a bill. This is to let the requester know ahead of time and give them the options on how to proceed. The bill draft requestor has ultimate authority and decision-making over the contents of the bill and the drafter documents that for the record. The drafter notes whether conformity to the state and federal Constitutions *was considered*, not that the bill conforms. After the requestor review the bill, it proceeds to legal review, and the legal director again reviews the bill and may identify any additional constitutional or legal concerns. If additional concerns are identified, the legal director communicates those concerns to the drafter and the drafter in turn notifies the requestor.

If you have any questions, please contact me.

cc: Senator Jim Peterson
Representative Mike Milburn

Bills with legal and constitutional concerns raised by MT Legal Services.

LC #	BILL #	REQUESTER	PARTY	SHORT TITLE
LC0030	SB 114	Hinkle, G	Republican	Sheriff must authorize federal employee arrest, search, or seizure
LC0035	SB 115	Hinkle, G	Republican	Prohibit disclosure of certain hunters' information
LC0041	SB 116	Hinkle, G	Republican	Prohibit physician-assisted suicide
LC0048	HB 159	Hinkle, G	Republican	Restrict authority of FWP to regulate ammo or firearms for hunting
LC0076	SB 17	Shockley, J	Republican	Require admin of detention facility by sheriff, chief of police or dept of corr
LC0077	SB 18	Shockley, J	Republican	Provide sheriff sole authority to hire/fire detention/law enforcement officers
LC0086	SB 21	Shockley, J	Republican	Court dismissal of case with no action
LC0098	SB 97	Shockley, J	Republican	Revise parental notice of abortion and judicial bypass
LC0106	SB 24	Shockley, J	Republican	Revise involuntary commitment of alcoholics
LC0190	SB 263	Barrett, D	Republican	Provide for minimum instream flow for certain fisheries
LC0352	HB 302	Tutvedt, B	Republican	Require driver's license test in English only
LC0451		Brenden, J	Republican	Require offset of state land acquisitions
LC0490	HB 162	Stahl, W	Republican	Prohibit mixing zones for city wastewater discharge
LC0525	HB 375	Hollandsworth, R	Republican	Reduce certain general fund transfers
LC0527	HB 316	Hollandsworth, R	Republican	Redistribute certain revenue and income to state general fund
LC0542	HB 274	Howard, D	Republican	Provide that employment of an unauthorized alien is unlawful
LC0543	HB 362	Peterson, K	Republican	Provide for budget sessions and general sessions of legislature
LC0549	HB 145	Peterson, K	Republican	Require resignation of legislative seat prior to taking government job
LC0550	SB 282	Lewis, D	Republican	Provide for student scholarship organizations and tax credits for donations
LC0575	HB 412	Harris, B	Republican	Disclosure of financial support of civil suits against industrial operations
LC0592		Smith, C	Republican	Revise joint and several liability
LC0608	SB 150	Wittich, A	Republican	Provide for protection of rights through actions against public officials
LC0612	SB 125	Wittich, A	Republican	Prohibit state gov't from administering fed health insurance purchase requirement
LC0623	HB 167	Regier, K	Republican	Criminalize offense involving death to an unborn child
LC0641	SB 129	Lewis, D	Republican	Referendum to limit state employee salaries and benefits
LC0660	HB 413	Harris, B	Republican	Establish net client hunting use as outfilter property
LC0663	HB 246	Connell, P	Republican	Direct Dept. of Transportation to implement statewide compatible mods to GVV
LC0708	SB 371	Hinkle, G	Republican	Encourage manufacture of ammunition in Montana to ensure availability
LC0711	SB 117	Hinkle, G	Republican	Coordination between counties, districts, and federal government
LC0762	HB 309	Vincent, C	Republican	Clarify prohibition on recreational access to ditches
LC0779	SB 161	Jackson, V	Republican	Nullify federal health care laws
LC0789	HB 168	Klock, H	Republican	Provide military income tax exemptions
LC0791	SB 145	Lake, B	Republican	Require administrative rules to be approved by interim committees
LC0796	SB 146	Lake, B	Republican	Regulate the use of private transfer fee covenants
LC0809	SB 127	Barrett, D	Republican	Require agencies to summarize rules and conform rules to law
LC0815	SB 209	Stahl, W	Republican	Revise subdivision and plating act
LC0855	HB 283	Warburton, W	Republican	Allow sex to be considered in certain insurance coverage

Bills with legal and constitutional concerns raised by MT Legal Services.

LC0889		Hale, A	Republican	Revise health laws regarding abortion
LC0890	HB 347	Hale, A	Republican	Revise education laws to provide for civics from kindergarten through 12
LC1003	SB 268	Balyeat, J	Republican	Referendum to require election of supreme court justices from districts
LC1289	HB 443	Burnett, T	Republican	Revise laws related to intrastate production, processing & consumption of food
LC1330	HB 294	Cook, R	Republican	Provide confidentiality of livestock testing info collected by Livestock Dept
LC1334	HB 312	Smith, C	Republican	Provide for an interstate compact related to health care freedom
LC1347	HB 500	Hansen, K	Republican	Make daylight savings time official in Montana; don't return to standard time
LC1490	SB 225	Priest, J	Republican	Revise laws governing qualifying small power production facility purchases
LC1512		Priest, J	Republican	Provide that Montanans do not have to buy health insurance
LC1536	HB 440	Stahl, W	Republican	Require all public and private employers to use E-Verify program
LC1562	HB 456	Smith, C	Republican	Define scope/boundaries of human sexuality/reproduct ed in K-12 public schools
LC1606	HB 513	Wagner, B	Republican	Require state to back transactions of state business with gold & silver coin
LC1618	HB 244	Skees, D	Republican	Repeal Montana renewable power production & rural econome development act
LC1619		Skees, D	Republican	Repeal teacher tenure
LC1625	HB 311	Brodehl, R	Republican	Revise penalty for fraudulent workers' compensation claims
LC1682		More, M	Republican	Resolution asserting state sovereignty
LC1706	HB 371	O'Neil, J	Republican	Revise statutes on practice of law
LC1717	HB 148	Kary, D	Republican	Allow motorized access to public lands for game retrieval
LC1741	HB 492	Howard, D	Republican	Prohibit immigration sanctuary policies by local governments
LC1765		Maclaren, G	Republican	Prohibit sanctions related to health insurance purchase decisions
LC1811	HB 332	Wagner, B	Republican	Restore the right of a fully informed jury
LC1823	HB 284	Burnett, T	Republican	Discontinue state employee efforts related to federal health care reform
LC1825	HB 352	Osmundson, R	Republican	Revise laws relating to water quality standards and provide alternatives
LC1836	HB 381	Kerns, K	Republican	Criminalize enforcement of certain federal firearms laws
LC1837	HB 448	Kerns, K	Republican	Enact interstate compact for enforcement of firearms freedom laws
LC1839	HB 321	Kerns, K	Republican	Nullify federal endangered species act
LC1855	SB 259	Buttrey, E	Republican	Require impoundment of license plates if driver is uninsured
LC1901	HB 455	O'Neil, J	Republican	Amend MAPA to allow non-attorney representation before agencies
LC1938	HB 506	Hendrick, G	Republican	Transfer management of certain federal public lands
LC1944	SB 245	Buttrey, E	Republican	Revise taxpayer subsidies of electricity purchase from municipal utilities
LC1968		Bennett, G	Republican	Referendum to revise parental notice of abortion and judicial bypass
LC2009	HB 493	Knox, J	Republican	Provide for 14th amendment state compact on birth records
LC2019	HB 504	Yates, M	Republican	Require landowner compensation for merchant transmission lines
LC2081	HB 554	Randall, L	Republican	Provide for interstate wolf management compact
LC2097	HB 382	Kennedy, D	Republican	Prohibit infringement of constitutional right to nullify certain fed legislation
LC 953	SB 316	Jackson, V	Republican	Challenge of certain water rights during adjudication
LC 1792	HB 527	Knox, J	Republican	Revise laws relating to arbitration for public labor contracts
LC 1852	HB 519	Greef, E	Republican	Direct Dept of Corrections to terminate certain prison industries contracts

Bills with legal and constitutional concerns raised by MT Legal Services.

LC 1939	HB 550	Kary, D	Republican	Establish state authority over EPA on regulation of greenhouse gases
LC 1966	HB 534	Howard, D	Republican	Require proof of citizenship to receive state services
LC 937	HJ 14	Wagner, B	Republican	Provide state sovereignty through local coordination
LC 1681	HB 544	More, M	Republican	Provide abortion screening to prevent provider negligence and patient coercion
LC 1281	HB 585	Hansen, K	Republican	Require public disclosure of contracts with outside counsel for state agencies
LC 1969	HB 591	Skattum, D	Republican	Provide special education scholarships
LC 2091	HJ 20	Skees, D	Republican	Resolution regarding Patient Protection and Affordable Health Care Act
LC 1947	HB 609	Maclaren, G	Republican	Referendum on freedom to choose health care coverage
LC 459		Balyeat, J	Republican	Provide for control of wolves
LC0042	SB 6	Keane, J	Democrat	Fee for PowerPoint presentation to Legislature or committee
LC0066	SB 297	Keane, J	Democrat	Provide a separate process for coal beneficiation
LC0095	SB 250	Kaufmann, C	Democrat	Require bars to have outside cameras
LC0628	HB 73	Hollenbaugh, G	Democrat	Recover costs and fees for unlicensed practice of a trade or profession
LC0761	SB 240	Moss, L	Democrat	Revise laws related to street lighting improvement districts
LC0808	HB 203	Menahan, M	Democrat	Allow evidence of other crimes in prosecution of sexual offenses
LC0847	HB 482	Phillips, M	Democrat	Clarifying conservation/management responsibilities for wild buffalo and bison
LC0947	SB 182	Van Dyk, K	Democrat	Eliminate 2 advisory units for board of regents
LC1316	SB 284	Blewett, A	Democrat	Generally revise law regarding insurance for legislators
LC1620	HB 507	Bennett, B	Democrat	Create safe Montana highways act
LC1621	HB 190	Bennett, B	Democrat	Prohibit collection agency reporting medical debt to credit rating agency
LC1624	HB 256	Wilmer, F	Democrat	Provide for disposition of remains of military personnel
LC1754	SB 308	Larsen, C	Democrat	Provide for criminal offense for refusal of alcohol testing
LC2069	SB 311	Gallus, S	Democrat	Clarify laws relating to term limits
LC0206	SB 7	Keane, J	Democrat	Require price of any renewable energy credit for sale or use in state be listed
LC 2170	SB 386	Phillips, M	Democrat	Generally revise oil & gas tax holiday
LC0193	HB 104	Energy & Telecommunications Inter		Clarify law to limit purchas from electric supplier to meters on date certain
LC0270	HB 124	Economic Affairs Interim		Create a state-level health insurance exchange
LC0277	HB 125	Economic Affairs Interim		Generally revise insurance and securities laws
LC0288	SB 76	Children, Families, Health, & Huma		Provide parole for those sentenced to custody of DPHHS and state facility
LC0389	SB 61	Law And Justice Interim Committee.		Allow admission of prior crimes in sexual offense crimes against children